IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

UDAILAL V. THE STATE OF RAJASTHAN

D. B. CRIMINAL APPEAL NO. 494/2002

Under Section 374 , Cr.P.C.,against the Judgment dated 05-06-2002 , passed by Shri M. K. Vyas, RHJS, the learned Additional Sessions Judge (Fast Track), Udaipur in Sessions Case No.23/2002.

DATE OF JUDGMENT :::: 08-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Vineet Jain for Mr.Sandeep Mehta,
for Appellant.
Mr. J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Appellant Udailal has preferred this appeal aggrieved by the judgment of Additional District & Sessions Judge (Fast

Track), Udaipur dated 05.06.2002 in Sessions Case No.23/2002.

The prosecution case was started on lodging an FIR by Inder Lal in Manila Police Station, Udaipur, on 16.01.2001. Complainant Inder Lal stated that his sister Smt. Bhanwari Bai married to Udailal, almost three years back. Udailal was serving in Power House Line. Sister Bhanwari Bai was 28 years old and having a son aged two years from the wedlock of Udailal. Bhanwari Bai and her husband were residing in a rented house of Chhogalal Gameti in Ganesh Nagar Pahara. The said house was taken on rent almost 3 to 4 months back. Udailal used to quarrel with Bhanwari Bai day in and day out for money. Udailal asked Bhanwari Bai to bring money from her brothers. A day before also, Udailal fought with her sister and the matter was thereafter settled by him. In the night, Udailal poured kerosene on Bhanwari Bai and flamed it with an intention to kill her sister. Bhanwari Bai burnt. On receipt of information, Bhanwari Bai was brought in the Government hospital.

The First Information Report was registered undr Section 307 and 498-A of IPC and later on, due to death of Bhanwari Bai, provisions of Section 302 of IPC were also attached. Police conducted usual investigation and, thereafter, filed charge-sheet under Sections 302 – 498A of IPC. The case was then committed to the Sessions Court, from where it was made over to the trial Court.

The trial Court framed charge against the accused under Sections 302 and 498A of IPC vide order dated 03.04.2000. Accused denied charge and claimed trial. Prosecution produced 13 witnesses and exhibited 36 documents. In defense, statement of accused was recorded as DW 1 and four documents were produced in defence. The statement of the accused was recorded under Section 313 of Cr.P.C. also. In those statements, accused stated that his wife burnt when she was working in kitchen and her clothes caught the fire from stove. He has tried to save his wife and even brought Tempo to take her to hospital.

Trial Court convicted appellant accused under Sections 498A and 302 of IPC and sentenced him to life imprisonment and penalty of Rs.10,000/-, in default to undergo six months simple imprisonment. The aforesaid sentence was awarded for conviction under Section 302 of IPC. Three years' simple imprisonment and Rs.2,000/- as penalty, in default to serve three months' simple imprisonment was awarded with regard to offence under Section 498-A of IPC.

The learned counsel for the appellant urged that accused has not committed any offence. In fact, deceased died out of incident stated by the accused in his statement under Section 313, Cr.P.C. The learned counsel for the appellant further challenged the recording of two dying declarations, one by the Police and the other by the Judicial Magistrate. It was submitted

that reliance on those dying declarations was not proper to convict the accused. It was thus, prayed that the order of conviction and sentence deserves to be set aside.

Per contra, learned Public Prosecutor argued that the material available on record proves prosecution case beyond doubt. It was submitted that dying declaration was recorded by the Police and Judicial Magistrate and in two dying declarations, there is no variance. It was further submitted that the statement of PW 2 Chhogalal corroborates the statements made in the dying declaration. It was thus, argued that there is no substance in the appeal, hence it should be dismissed.

We have considered the rival submissions of the learned counsel for the parties and carefully gone through the record. In the dying declaration (Ex.P-10), deceased Bhanwari Bai stated that her husband used to quarrel with her. On the day of occurrence, at about 11.00 p.m., accused Udailal was waiting for everyone to sleep. He asked her to bring drinking water.When she brought water, immediately thereupon kerosene was poured on her. Accused flamed a “biri” and stick was thrown on her, giving cause to the incident. The reason of doing the same was also explained in the dying declaration when deceased Bhanwati Bai stated that accused Udailal used to demand money to be brought from her brother. She further stated that at the time of fire, no-body was there. However, when she shouted, then

landlord of house Chhogalal and landlord's son and daughter came to save her. Two persons further came whom she was not knowing. The aforesaid statement was recorded by the Judicial Magistrate, after receiving the satisfaction of the Doctor about the patient's condition for recording her statement.

Judicial Magistrate Shanker Lal Gupta was produced as PW 8. Said witness stated that he received letter for recording statement from In-Charge, Mahila Thana through the Chief Judicial Magistrate. He visited hospital, where on Bed No. A of Burn Unit, deceased Bhanwari Bai was present. He has taken satisfaction of Dr. Saurabh Tiwari before recording her statement. It was stated that on Ex.P-9 itself, Doctor's signatures were obtained. Bhanwari Bai was identified by Amar Kanth – Incharge, Mahila Thana and Bhanwari Bai was in a position to make statement. Her statement was recorded as Ex.P-10. In the cross examination, nothing material was asked to said witness. Thus, witness cannot be disbelieved.

In the statement of Chhoga Lal (PW 2), it was stated that Inder Lal and Bhanwari Bai were residing in his house. He went to the scene of occurrence when he heard the shout in the night. When he opened the door, accused Udailal was running away from his room. As the main gate of the compound was locked, thus accused Udailal jumped over the main gate. Said witness further stated that when he went to scene of occurrence,

Bhanwari Bai was trying to save herself, but by the time, her clothes were already burnt. The witness further stated that he informed about the incident to Inder Lal. In cross-examination, though it was stated that he had not heard facts regarding demand of money by accused Udailal. However, the said witness maintained his statement regarding occurrence.

So far as the first dying declaration is concerned, it was recorded as Ex.P-2. Careful examination of said dying declaration also shows that the deceased has repeated same facts as were otherwise stated in the presence of Judicial Magistrate. Statement of Dr.S.K.Bhatnagar PW 7 fortifies the facts that deceased sustained superficial and deep burn and she died due to septicemia shock arising out of burning of deceased before death. He further stated that burn injuries were sufficient to cause death.

The trial Court considering not only the dying declaration, but other material available on record, came to the conclusion that the prosecution proved its case beyond doubt. The finding recorded by the trial Court has not been challenged by the learned counsel for the appellant, other than raising two arguments to challenge the conviction and sentence. Merely recording of two dying declarations cannot be made a ground to disbelieve it, more so, when first dying declaration was recorded by the appellant immediately when deceased was brought to

hospital and the second dying declaration was recorded by the Judicial Magistrate afterwards when a request was sent by the Incharge, Mahila Thana to the Chief Judicial Magistrate for recording the statement of Smt.Bhanwari Bai. Pursuant to said request (Ex.P-9), dying declaration was recorded by the Judicial Magistrate vide Ex.P-10, hence in these circumstances, two dying declarations were made having no variance, thus the argument of the counsel for the appellant cannot be accepted.

The perusal of dying declaration along with other material available on record shows that the accused was rightly being held guilty for the offences. The statement of the accused as was stated by him under Section 313, Cr.P.C. As well as witness DW-1is false. The evidence available on record disproves statement of the accused, therefore, second argument of the learned counsel for the appellant cannot be accepted, which goes contrary to dying declaration. The statement of accused has not been supported by any witness or material available on record. Hence we find no reason to interfere with the judgment of the learned trial Court. The trial Court has rightly convicted and sentenced accused for the offences.

In the result, the appeal filed by accused fails and the same is dismissed.

(MUNISHWARNATH BHANDARI),J. **(BHAGWATI PRASAD),J.**

scd.